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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In Re: ) Bankruptcy Case  
MODESTO VIDANA ANGULO, ) No. 09-67031-fra7  
Debtor. )  
OREGON COMMUNITY CREDIT UNION, ) Adversary Proceeding  
Plaintiff, ) No. 10-6061-fra  
vs. )  
MODESTO V. ANGULO, )  
Defendant. ) MEMORANDUM OPINION

I. INTRODUCTION

Plaintiff seeks a judgment excepting its claim against the Debtor/Defendant from discharge, pursuant to 11 U.S.C. § 523(a)(2). Specifically, the Plaintiff alleges that the claim arises out of Defendant's fraudulent provision of a Social Security number that was not his.

Defendant denies that the Social Security number he provided was not his, that he obtained money from the Plaintiff by false pretenses, a false representation, or actual fraud, and that the

1 Plaintiff reasonably relied on Defendant's representation with regard to  
2 his Social Security number. The answer goes on to raise three  
3 affirmative defenses, each of which asserts that the Plaintiff comes to  
4 Court with unclean hands, and therefore is not entitled to relief. The  
5 specific allegations are:

6 1. That Plaintiff failed to comply with financial record-  
7 keeping and reporting requirements of Title 31 of the United States Code,  
8 as set out in 31 CFR Part 103;

9 2. That Plaintiff failed to comply with the reporting  
10 requirements set out in 12 CFR Part 748; and

11 3. That Plaintiff, in connection with its dealings with  
12 Defendant, is in violation of O.R.S. 723.816, establishing prohibited  
13 acts for officers, directors, employees or agents of credit unions.

14 Plaintiff filed a motion for partial judgment on the pleadings  
15 with respect to Defendant's affirmative defenses.

## 16 II. JUDGMENT ON THE PLEADINGS

17 A motion for judgment on the pleadings under Fed.R.Civ.P. 12(c)  
18 is governed by the same standards as a motion to dismiss under  
19 Fed.R.Civ.P. 12(b)(6). Burnette v. Carothers, 192 F.3d 52, 56 (2d Cir.  
20 1999).

21 Review of a pleading under Fed.R.Civ.P. 12(b)(6)<sup>1</sup> is based on  
22 the contents of the pleading, the allegations of which are accepted as  
23 true and construed in the light most favorable to the plaintiff. North  
24 Slope Borough v. Rogstad (*In Re Rogstad*), 126 F.3d 1224, 1228 (9th Cir.

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26 <sup>1</sup>Fed.R.Civ.P. 12(b)(6) is made applicable by Fed.R.Bankr.P. 7012(b).

1 1997) (citations omitted). "[O]nce a claim has been adequately stated, it  
2 may be supported by showing any set of facts consistent with the  
3 allegations in the complaint [in the present case, the Answer]." Bell  
4 Atlantic Corp. v. Twombly, 127 S.Ct.1955, 1969 (2007) (internal citation  
5 omitted).<sup>2</sup> This standard requires "enough fact to raise a reasonable  
6 expectation that discovery will reveal evidence [supporting the cause of  
7 action]. Id. at 1965. "A well-pleaded complaint may proceed even if it  
8 strikes a savvy judge that actual proof of those facts is improbable, and  
9 'that a recovery is very remote and unlikely.'" Id. (internal citation  
10 omitted). However, the court need not accept as true unreasonable  
11 inferences or conclusory legal allegations cast in the form of factual  
12 allegations. Naert v. Daff, (*In Re Washington Trust Deed Service Corp.*),  
13 224 B.R. 109, 112 (BAP 9th Cir. 1998).

### 14 III. DISCUSSION

15 Plaintiff asserts that its claim is excepted from discharge by  
16 11 U.S.C. § 523(a) (2) (A):

17 A discharge under section 727....of this title does  
18 not discharge an individual from any debt -

19 (2) for money, property services or an extension,  
20 renewal or refinancing of credit, to the extent  
21 obtained by -

22 (A) false pretenses, a false representation,  
23 or actual fraud, other than a statement respecting  
24 the debtor's or an insider's financial condition.

25 Defendant asserts as affirmative defenses violations of

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26 <sup>2</sup> The Bell Atlantic Corp. opinion supercedes that part of Conley v. Gibson, 355 U.S. 41, 45-46 (1957), wherein the Supreme Court stated that dismissal for failure to state a claim is improper unless it appears beyond a doubt that the plaintiff can prove no set of facts to support his claim or entitle him to relief.

1 various regulatory rules or statutes. In essence, it is Defendant's  
2 position that, having violated these regulations, Plaintiff has forfeited  
3 the right to have its claim against the Defendant excepted from  
4 discharge. The Court does not agree. Taking each of the specific  
5 allegations in turn:

6 1. Patriot Act Violation: Pursuant to the so-called USA  
7 Patriot Act, Pub. L. No. 107-56, 115 Stat 272 (2001), the Secretary of  
8 the Treasury promulgated anti-money laundering programs in Subpart 1 of  
9 31 CFR Chapter 1. As part of these regulations, 31 CFR § 103.121  
10 established a customer identification program for banks, credit unions,  
11 and other depository institutions. The regulations require lenders, in  
12 connection with new loans, to collect and verify certain information from  
13 the borrower. The purpose of the program is evident from the sample  
14 notice prescribed by 31 CFR § 103.121(b)(5)(iii):

15 IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A  
16 NEW ACCOUNT

17 To help the government fight the funding of terrorism  
18 and money laundering activities, federal law requires  
19 all financial institutions to obtain, verify, and  
20 record information that identifies each person who  
21 opens an account.

22 What this means for you: when you open an account, we  
23 will ask for your name, address, date of birth, and  
24 other information that will allow us to identify you.  
25 We may also ask to see your driver's license or other  
26 identifying documents.

27 The purpose of the USA Patriot Act and its attendant  
28 regulations is to protect the nation from money laundering and terrorist  
29 activities. It has no bearing on a lending institution's rights to  
30 collect what is owed, or to object to discharge of its claims in  
31 bankruptcy. Plaintiff's alleged failure to comply with mandated client

1 identification programs, even if established, does not by itself  
2 constitute a defense to the Bank's claim under § 523.

3       2. Reporting Requirements: Defendant alleges generally (not  
4 to say vaguely) that Plaintiff has not complied with requirements set out  
5 in 12 CFR Part 748. Part 748 is a portion of the regulations governing  
6 the administration of national credit unions. It establishes a security  
7 program which, among other things, requires reporting of various events.  
8 Plaintiff's failure to comply with this section does not, in and of  
9 itself, constitute a defense to the claims set out in the complaint.

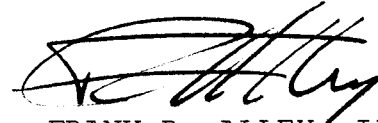
10       3. O.R.S. 723.816: This state statute prohibits officers,  
11 directors, employees or agents of credit unions from wilfully, with  
12 intent to deceive, falsifying any of the books, accounts or records of a  
13 credit union. Violation of this statute by an individual may result in  
14 criminal penalties under O.R.S. 723.992. While evidence of fraudulent  
15 conduct with respect to the Credit Union's loan to the Defendant may be  
16 relevant to the Plaintiff's claim of justifiable reliance, violation of  
17 the statute does not, in and of itself, establish a defense to the § 523  
18 claim.

#### 19                                   IV. CONCLUSION

20       One of the elements of Plaintiff's claim under Code §  
21 523(a)(2)(A) is that it justifiably relied on the representations made by  
22 the Defendant. Field v. Mans, 516 U.S. 59 (1995) It follows that  
23 evidence of applicable regulatory schemes, and Plaintiff's failure to  
24 comply with them, may have some bearing on the reliance element of the  
25 Plaintiff's case. It does not follow, however, that failure to comply  
26 with the statutes and regulations cited to by the Defendant, without

1 more, operates to deny the relief sought by the Plaintiff.

2           An order will be entered allowing the Plaintiff's motion for  
3 partial judgment on the pleadings, and striking Defendant's affirmative  
4 defenses.

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7 FRANK R. ALLEY, III  
8 Bankruptcy Judge  
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